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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA	)	No. CR 09-0103 CRB
	)	
	)	UNITED STATES SENTENCING
	)	MEMORANDUM
v.	)	
	)	
JOEL CEJA MENDOZA,	)	
	)	
	)	Date: September 29, 2010
	)	Time: 2:15 p.m.
Defendant.	)	Court: Hon. Charles R. Breyer
	)	

On June 23, 2010, the defendant pled guilty to Count One of the Indictment charging him with knowingly and intentionally conspiring to possess with intent to distribute and to distribute 1 kilogram or more of a mixture or substance containing a detectable amount of heroin, and 50 grams or more of methamphetamine, in violation of Title 21, United States Code, Sections 846, 841(b)(1)(A). According to the terms of the defendant's plea agreement, the parties agreed that the appropriate sentence in this case is between 70 and 87 months.

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GOVERNMENT'S SENTENCING MEMORANDUM  
No. CR 09-0103 CRB

1 On September 3, 2010, the government received the final Presentence Report ("PSR") in  
2 this matter. The PSR recommended a low-end Guideline sentence of 70 months. For the reasons  
3 detailed below, the government disagrees with the PSR's recommended sentence and believes  
4 that a sentence of 87 months is appropriate in this case.

### 5 **BACKGROUND**

6 The government's long term investigation into the Rafael Franco Perez's drug  
7 organization began in the fall of 2006 and concluded with nine individuals, including the  
8 defendant, being arrested on February 4, 2009. The investigation revealed that the Perez  
9 organization imported drugs into the United States through the Mexican border and distributed  
10 kilogram-quantities of controlled substances, in particular crystal methamphetamine and heroin,  
11 in and around the San Francisco Bay Area.

12 In early November of 2008, based on interceptions from a federally authorized wiretap on  
13 Perez's cellular telephone, agents identified a shipment of crystal methamphetamine being sent  
14 from Mexico to Perez in the Bay Area. On November 17, 2008, Perez was intercepted giving  
15 directions to the defendant, who was driving a truck containing the methamphetamine. A short  
16 time later, Perez was intercepted giving directions to co-defendant Vincente Franco Escalera,  
17 whose task was to meet the defendant and help unload the methamphetamine.

18 As revealed by the wiretap interceptions, the original plan called for the  
19 methamphetamine to be unloaded at Escalera's home. However, because of the concern that  
20 Escalera's home did not have an enclosed garage, Perez instructed the defendant and Escalera to  
21 unload the methamphetamine at the defendant's home in Los Banos, California. A short time  
22 later, the California Highway Patrol pulled over the defendant and discovered over 14 pounds of  
23 pure methamphetamine stored in a secret compartment in the truck's transmission. Perez was  
24 later intercepted commenting to Escalera, "I hope they don't take him [the defendant] to the  
25 station, because if so, that's going to be it for that guy."

26 On February 4, 2009, the defendant was arrested and a federal search warrant was  
27 executed on his home in Los Banos, California.

## LEGAL STANDARD

Under Ninth Circuit case law, the Court should impose a sentence sufficient, but not greater than necessary, to reflect the purposes of sentencing that Congress identified in 18 U.S.C. § 3553(a)(2). *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). The Court should begin the process of determining an appropriate sentence by calculating the correct Guidelines range. *Id.*

Although the Guidelines are not binding, they “reflect a rough approximation of sentences that might achieve section 3553(a)’s objectives.” *United States v. Rita*, 551 U.S. 338, 350 (2007). The Guidelines range will be the starting point and the initial benchmark for the sentence. *Carty*, 520 F.3d at 991. The Court should keep the Guidelines range in mind throughout the process, allow the parties to argue for a sentence they believe is appropriate, and consider the factors identified in 18 U.S.C. § 3553(a). *Id.*

## GUIDELINES CALCULATION

The government encourages the Court to accept the plea agreement signed by the parties, including the Guidelines calculation contained therein.<sup>1</sup> While the defendant was responsible for the transportation and delivery of a large amount of methamphetamine, his role in the drug trafficking organization under investigation was quite small, and to the best of the government’s knowledge, was limited to the single delivery that was charged in this case. Hence, the parties’ plea agreement grants the defendant a minor role reduction pursuant to U.S.S.G. § 3B1.2. The probation officer’s findings support this conclusion and his report characterizes the defendant’s role as “limited.” (PSR at ¶ 27).

## DISCUSSION

Based on his involvement in the charged conspiracy, the defendant and the Probation Office believe that a low-end Guideline sentence of 70 months is appropriate in this case.

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<sup>1</sup>The parties, along with the probation officer, agree that the defendant’s adjusted offense level is 27 and his criminal history category is I. Accordingly, his sentencing Guidelines are 70-87 months imprisonment.

1 The PSR states that “the nature, circumstances, and seriousness of this offense are  
2 unremarkable.” (PSR Sent. Rec. at pg. 1.) However, the government believes that the amount  
3 of methamphetamine involved in this offense was actually quite remarkable and the defendant’s  
4 involvement in the crime warrants the Court imposing a high-end Guidelines sentence of 87  
5 months imprisonment.

6 In deciding an appropriate sentence for the defendant, the Court should consider that the  
7 defendant played an important role in the transportation of over 14 pounds of pure  
8 methamphetamine from Mexico into the United States. Based on wiretap recordings and  
9 surveillance, the defendant’s role in the transaction was two-fold: 1) to drive the truck containing  
10 the methamphetamine from Mexico into the United States; and 2) to help unload the  
11 methamphetamine. As an initial matter, 14 pounds of pure methamphetamine is a staggering  
12 amount of drugs. According to the agents involved in this investigation, the street value of the  
13 methamphetamine in the defendant’s truck was approximately \$250,000. The sole fact that the  
14 defendant was tasked with transporting such a large amount of drugs demonstrates the level of  
15 trust and responsibility that was given to him by the organization, even if it was only on this  
16 single occasion.

17 Furthermore, the Court should consider that the defendant’s truck was modified with a  
18 sophisticated trap compartment involving the transmission. Although there is no evidence that  
19 the defendant was involved in the construction of the trap compartment or the loading of the  
20 methamphetamine into the compartment, the defendant admitted that he knew that the  
21 transmission had been modified and contained drugs. In addition, in the bed of the defendant’s  
22 truck, agents found transmission fluid, a funnel, black tubing, and a socket that fit the truck’s  
23 transmission casing. This evidence demonstrates that the defendant was instructed on the  
24 operational details of the trap compartment and that he planned to unload the methamphetamine  
25 from the truck’s transmission. In addition, the defendant further involved himself in the  
26 conspiracy by agreeing to unload the methamphetamine at his house in Los Banos. In light of  
27 this evidence, a low-end Guideline sentence is simply inappropriate.

Moreover, in concluding that a low-end Guideline sentence of 70 months is appropriate in this case, the PSR notes that “[t]his is defendant’s first conviction and he was not a target of the extensive Perez investigation.” (PSR Sent. Rec. at pg. 1.) In essence, the PSR is recommending a low-end Guideline sentence based on the defendant’s limited role in the conspiracy and his lack of prior criminal history. However, the defendant’s plea agreement has already accounted for each of these factors. Specifically, the defendant’s plea agreement calculates the Guidelines by placing the defendant in criminal history I, granting him a safety-valve reduction pursuant to U.S.S.G. § 2D1.1, and granting him a minor-role reduction pursuant to U.S.S.G. § 3B1.2. Therefore, if the Court accepts the plea agreement negotiated by the parties, it would essentially result in double counting for the Court to consider these particular factors again. For example, if the defendant’s plea agreement had not provided for a minor-role reduction pursuant to U.S.S.G. § 3B1.2, the defendant’s adjusted offense level would have been 33 with a resulting Guidelines range of 135-168 months. This is a drastic difference from the Guidelines range (70-87 months) that the defendant faces pursuant to the plea agreement. Therefore, it is inappropriate for the defendant to argue that he deserves a low-end Guideline sentence based on his limited role in the Perez organization or his lack of criminal history.

#### **CONCLUSION**

In sum, the plea agreement (and the resulting Guidelines calculation) in this case took into consideration that the defendant: 1) had no criminal convictions; 2) was not a target of the Perez investigation prior to his arrest; and 3) played a limited role in the Perez organization. Within that Guidelines range of 70-87 months, the Court must decide the appropriate sentence for the defendant. In light of the large amount of methamphetamine involved in the transaction and the defendant’s important role in transporting the drugs, the government believes that only a high-end Guideline sentence of 87 months will adequately address the seriousness of this offense, promote respect for the law, provide just punishment, protect the community, deter the defendant from future criminal conduct, and deter other individuals tempted to engage in large-

1 scale narcotics trafficking. Therefore, based on the foregoing, the Government recommends a  
2 sentence of 87 months imprisonment, five years of supervised release (with conditions to be  
3 fixed by the Court), and a \$100 special assessment.

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5 DATED: September 21, 2010

6 Respectfully submitted,

7 MELINDA HAAG  
8 United States Attorney

9 /s/  
10 AARON D. WEGNER  
11 Assistant United States Attorney  
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